IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 34430 of 2006(W)

PETITIONER:

K. BALAN,
HEADMASTER, MOORIYAD CENTRAL U.P.SCHOOL,
P.O. MOORIYAD, KUTHUPARAMBA, KANNUR DISTRICT.

BY ADV. SRI.K.P.HARISH

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION (K), SECRETARIATE,
THIRUVANANTHAPURAM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
KUTHUPARAMBA, KUTHUPARAMBA P.O., KANNUR DISTRICT.

3. P.K. NARAYANI,
NEEDLE WORK TEACHER, MOORIYAD CENTRAL U.P.SCHOOL,
P.O. MOORIYAD, KANNUR DISTRICT.

4. THE MANAGER,
MOORIYAD CENTRAL U.P.SCHOOL, P.O. MOORIYAD,
KANNUR DISTRICT.

ADDITIONAL RESPONDENT

5. P.K.GOVTI, S/O KORAN GURUKKAL
AGED 62 YEARS, ARUN NIVAS, MOORIYAD P.O.
KOOTHUPARAMBA, KANNUR DISTRICT

(Impleaded vide order dated 26/02/2007 in I.A.No.2989/07)

BY ADV. SRI.S.JAYAKRISHNAN
SRI.M.SASINDRAN
GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF G.O.(RT)NO.4304/2000/G.EDN. DTD. 24-10-00 ISSUED BY R1**
EXT.P2	**TRUE COPY OF THE ORDER OF APPROVAL ISSUED BY R2 DTD. 16-11-00**
EXT.P3	**TRUE COPY OF THE ORDER DTD. 1-1-02**
EXT.P4	**TRUE COPY OF THE JUDGMENT IN O.P.NO.8747/02**
EXT.P5	**TRUE COPY OF THE ABOVE ORDER BEARING GO(RT)4188/2006/G.EDN. DATED 27-09-06 OF R1**
EXT.P6	**TRUE COPY OF THE COMMUNICATION DTD. 19-10-06 ISSUED BY R2**
EXT.P7 (A)	**A TRUE EXTRACT OF THE ATTENDANCE REGISTER MAINTAINED IN THE SCHOOL.**
EXT.P7(B)	**TRUE COPY OF THE PAY REGISTER MAINTAINED IN THE SCHOOL.**
EXT.P8	**TRUE COPY OF THE COMMUNICATION DTD. 24-11-06 ISSUED BY R2**
EXT.P9	**TRUE COPY OF THE LETTER DTD. 11-12-06 SUBMITTED BY THE PETITIONER.**
EXT.P10	**TRUE COPY OF THE COMMUNICATION DTD. 15-12-06 ISSUED BY R2**

RESPONDENT'S EXHIBITS

EXT.R5(A)	**TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE HON CHIEF MINISTER DTD. 1-12-06**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.34430 OF 2006

Dated this the 10th day of April, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner challenges Exts.P8 and P10 and seeks a direction to provide necessary clarifications for the implementation of Ext.P5 order with specific reference to service data of the third respondent. Declaration is also sought that Ext.P5 Government order is impossible to be implemented for want of necessary data. According to the petitioner, the third respondent was appointed only in the year 2000 and in fact it is approved by Ext.P2. Ext.P1 is the order passed by the Government, as per which the appointment of the third respondent was approved with effect from 18/07/1983 treating the case as a special case. Third respondent was paid salary from December 2000 onwards. Arrears of salary from 18-07-1983 to 30-11-2000 was not paid by the fourth

respondent. It is further stated that the earlier Headmaster submitted the arrear bill proposal for the above period also before the second respondent. By Ext.P3 the same was returned by the second respondent stating that she is entitled to salary only from 09-11-2000 since she has not actually worked for the period from 18-07-2003. This order was challenged by the third respondent and this court vide Ext.P4 judgment directed the Government to consider the matter. On the representation filed by the fourth respondent before the first respondent, Ext.P5 order is passed. Ext.P5, according to the petitioner is passed without hearing the petitioner. By Ext.P5 the Government has set aside Ext.P3 and the Assistant Educational Officer, Kuthuparamba was directed to draw and disburse arrears of salary due to the third respondent for the period from 18-07-1983 to 30-11-2000, within 16-11-2006 without fail. Petitioner received Ext.P6 communication whereunder he was requested to return the original petition with the arrear bill for the period from 18-07-1983 to 30-11-2000. Exts.P7(A) and P7 (B)

are extracts of the attendance register and pay register. They are produced to show that the records were manipulated. Petitioner was served with Ext.P8 communication directing him to grant the benefits on or before 16-11-2006. This is issued without reference to the clarification sought. Petitioner filed Ext.P9 seeking extension, in response to which Ext.P10 is issued reiterating the same stand and granting one week time to comply with the direction.

2. Counter affidavits are filed.

3. I heard learned counsel for the parties.

4. By Ext.P1 apparently the appointment of the third respondent has been approved as a special case from 18-07-1983. The arrears were however not paid from the said date. The AEO of course rejected the request of the petitioner. Pursuant to the direction of this court and on the basis of the representation Ext.P5 order was passed. In Ext.P5 infact Government has entered the following findings:

> " On going through the concerned records, it is seen that the petitioner had marked attendance along with other teachers, from 18-07-1983 to 02-01-1994 in the same register and there after in a separate register as per the direction of the Assistant Educational Officer. Hence the statement of the Assistant Educational Officer that the petitioner had not worked in the school with effect from 18-07-1983 is baseless."

5. It is in such circumstances that the direction was issued to comply with the direction to pay the arrears. Petitioner is the Headmaster of the school. There is no challenge to Ext.P5 order even treating it as an original order within the meaning of Rule 93 of Chapter XIV A KER. There is no attempt to get the order reviewed. In such circumstances, Ext.P5 remains final and unchallenged. If Ext.P5 remains unchallenged, the findings therein also cannot be impugned by the petitioner in the manner sought to be done, that is, by seeking clarifications. Ext.P5 is crystal clear that third respondent is entitled to salary for the period from

18-07-1983 to 30-11-2000. I do not think it is open to the petitioner as the Headmaster to reopen the issue which I think is covered by Ext.P5. The learned counsel for the petitioner as also learned counsel appearing for the additional fourth respondent made an attempt to point out that the records relied on by the third respondent are manipulated and in fact the teacher has not worked as claimed by her during the period in question. I am of the view that this is a matter which is concluded by Ext.P5, the findings in which I have already more elaborately referred to Ext.P5 as already noted is not under challenge. The direction was to draw and disburse salary. Of course, the apprehension of the petitioner is that petitioner may be saddled with liability at the time of audit. Learned Government Pleader submits that such an apprehension is without any basis and petitioner will be only complying with the order of the Government and the Educational authority. She would further submit that there would be no warrant for proceeding against the petitioner in complying with Ext.P5 order. This stand

is taken in the counter affidavit also. Therefore this apprehension of the petitioner is also misplaced.

In such circumstances, I find that the writ petition is wholly without any merit. In view of the fact that there is an interim order passed by this court staying Ext.P10, one month time is granted from today for the petitioner for complying with the impugned directions. Subject to the same, writ petition is dismissed.

K.M.JOSEPH
JUDGE

sv.